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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RALPH WILDER, Derivatively on
Behalf of SONIC SOLUTIONS, INC.

Plaintiff,

v.

ROBERT J. DORIS, MARY C. SAUER,
JAMES A. MOORER, MICHAEL C.
CHILD, ROBERT M. GREBER, PETER J.
MARGUGLIO, R. WARREN LANGLEY,
A. CLAY LEIGHTON, KIRK PAULSEN,
MICHAEL J. COSTELLO and
CHRISTOPHER A. KRYZAN,

Defendants,

and

SONIC SOLUTIONS, INC.

Nominal Defendant.

) Case No. C 07-01500 CW

) **MEMORANDUM OF LAW IN**
) **FURTHER SUPPORT OF**
) **PLAINTIFFS ANDREW**
) **WALTER AND JAMES**
) **FORSETH'S MOTION TO**
) **CONSOLIDATE CASES AND**
) **TO APPOINT LEAD**
) **PLAINTIFFS AND LEAD**
) **COUNSEL, AND IN**
) **OPPOSITION TO THE**
) **MOTION OF SAMMY K.**
) **DOOLITTLE AND RALPH D.**
) **WILDER**

) Date: August 7, 2007

) Time: 2:00 p.m.

) Before: Hon. Claudia Wilken

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS ANDREW WALTER AND
JAMES FORSETH'S MOTION TO CONSOLIDATE CASES AND TO APPOINT LEAD
PLAINTIFFS AND LEAD COUNSEL, AND IN OPPOSITION TO THE MOTION OF SAMMY K.
DOOLITTLE AND RALPH D. WILDER
CASE NO. C 07-01500 CW

1 ANDREW WALTER, Derivatively on)
 2 Behalf of Nominal Defendant SONIC) Case No. C 07-02344 CW
 SOLUTIONS,)
 3 Plaintiff,)
 4 v.)
 5 ROBERT J. DORIS, MARY C. SAUER,)
 6 JAMES A. MOORER, MICHAEL C.)
 CHILD, ROBERT M. GREBER, PETER J.)
 7 MARGUGLIO, R. WARREN LANGLEY,)
 A. CLAY LEIGHTON, KIRK PAULSEN,)
 8 MICHAEL J. COSTELLO and)
 CHRISTOPHER A. KRYZAN,)
 9 Defendants,)
 10 and)
 SONIC SOLUTIONS,)
 11 Nominal Defendant.)

12)
 13 JAMES FORSETH, Derivatively on)
 Behalf of Nominal Defendant SONIC) Case No. C 07-03178 CW
 SOLUTIONS,)
 14 Plaintiff,)
 15 v.)
 16 ROBERT J. DORIS, MARY C. SAUER,)
 JAMES A. MOORER, MICHAEL C.)
 17 CHILD, ROBERT M. GREBER, PETER J.)
 MARGUGLIO, R. WARREN LANGLEY,)
 18 A. CLAY LEIGHTON, KIRK PAULSEN,)
 MICHAEL J. COSTELLO and)
 19 CHRISTOPHER A. KRYZAN,)
 20 Defendants,)
 21 and)
 22 SONIC SOLUTIONS,)
 23 Nominal Defendant.)

1 SAMMY K. DOOLITTLE, Derivatively on)
2 Behalf of Nominal Defendant SONIC)
3 SOLUTIONS,)
4 Plaintiff,)
5 v.)
6 ROBERT J. DORIS, DAVID C. HABIGER, MARY)
7 C. SAUER, A. CLAY LEIGHTON, MARK ELY,)
8 ROBERT M. GREBER, PETER J. MARGUGLIO,)
9 and R. WARREN LANGLEY,)
10 Defendants,)
11 and)
12 SONIC SOLUTIONS,)
13 Nominal Defendant.)

Case No. C 07-03361 BZ

Derivative plaintiffs Andrew Walter and James Forseth respectfully submit this memorandum of law in further support of their motion to consolidate the related actions, appoint themselves as Lead Plaintiffs and approve their selection of Lead Counsel, and in opposition to the motion filed by plaintiffs Sammy K. Doolittle and Ralph D. Wilder for their appointment as Lead Plaintiffs and appointment of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, as Lead Counsel.¹

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A plaintiff who leads a shareholder's derivative suit occupies a position "of a fiduciary character," in which "[t]he interests of all in the redress of the wrongs are taken into his hands, dependent upon his diligence, wisdom and integrity." *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541 (1949). Thus, "[p]ursuant to Fed. R. Civ. P. 23.1, a plaintiff bringing a derivative shareholder action must be qualified to serve in a fiduciary capacity as a representative of the class of stockholders, whose interest is dependent upon the representative's adequate and fair prosecution of the action." *Bender v. Parks*, 2004 U.S. Dist. LEXIS 17090, at *11 (D.D.C. Jan. 15, 2004) (citation omitted); see *Larson v. Dumke*, 900 F.2d 1363, 1367 (9th Cir. 1990) (discussing qualities necessary to satisfy adequacy of a proposed derivative plaintiff). Currently, there are two motions pending filed by: (1) plaintiffs Andrew Walter ("Mr. Walter") and James Forseth ("Mr. Forseth"), who request their appointment as Lead Plaintiffs and the appointment of their selection of the law firm of Schiffrin Barroway Topaz & Kessler, LLP ("Schiffrin Barroway") as Lead Counsel; and (2) plaintiffs Ralph Wilder ("Mr. Wilder") and Sammy Doolittle ("Mr. Doolittle"), who request their appointment as Lead Plaintiffs and the appointment of Lerach Coughlin Stoia Geller Rudman & Robbins LLP ("Lerach Coughlin") as Lead Counsel.

Here, for the reasons stated herein, of the competing lead plaintiff movants, Messrs.

¹ All movants agree that consolidation of these actions is proper, thus, that aspect of the competing motions is unopposed.

Walter and Forseth are most capable of “act[ing] in the stead of the corporation, as a corporate surrogate seeking vindication of a corporate right” as they will ensure that Defendants are held accountable for their improper options backdating scheme. *Sweet v. Bermingham*, 65 F.R.D. 551, 553 (S.D.N.Y. 1975). In the alternative, should this Court deem it appropriate, Messrs. Walter and Forseth should be appointed as Co-Lead Plaintiffs with the other competing Lead Plaintiff movants and their counsel, Schiffrin Barroway should be appointed as Co-Lead Counsel with Lerach Coughlin.

II. MESSRS. WALTER AND FORSETH SHOULD BE APPOINTED AS LEAD PLAINTIFFS

In considering the appointment of a lead plaintiff in a shareholder derivative action, courts readily assess which movant will adequately serve the interests of the derivative plaintiffs and the nominal defendant. *Millman v. Brinkley*, 2004 U.S. Dist. LEXIS 20113, *8 (N.D. Ga. Oct. 1, 2004). The various factors that courts consider include: (1) the quality of the pleadings; (2) the vigorousness of the prosecution of the lawsuits; and (3) whether plaintiffs are represented by capable counsel. *Millman*, 2004 U.S. Dist. LEXIS 20113, at *9-11; *Dollens v. Zions*, 2001 U.S. Dist. LEXIS 19966, *13-19 (N.D. Ill. Dec. 4, 2001). An evaluation of these factors supports the appointment of Messrs. Walter and Forseth as Lead Plaintiffs.

Here, within a few weeks of one another, plaintiffs Mr. Walter and Mr. Wilder each filed complaints on behalf of Sonic Solutions, Inc. (“Sonic” or the “Company”). Shortly thereafter Mr. Forseth and Mr. Doolittle also filed complaints on behalf of Sonic. Each of the complaints seeks to remedy defendants’ breaches of fiduciary duty, unjust enrichment, statutory violations, and other violations of law arising out of defendants’ conduct of authorizing the backdating of stock option grants to Sonic’s top executives at the expense of Sonic and its shareholders. However, in addition to the foregoing, Mr. Forseth’s complaint also includes a unique allegation pursuant to California Corporations Code § 600(c) for the Company’s Board of Directors’ failure to hold a statutorily required shareholder meeting within the requisite time period – an allegation

1 not found in either Mr. Wilder's or Mr. Doolittle's complaints. The inclusion of this additional
2 valuable claim not only demonstrates that the complaints filed by Messrs. Walter and Forseth are
3 superior to those of the other competing movants' but also demonstrates Messrs. Walter's and
4 Forseth's dedication to vigorously prosecute defendants for *all* violations of law which have
5 caused injury to Sonic and its shareholders. Further, Messrs. Walter and Forseth, through their
6 counsel, Schiffrin Barroway, have also hired a forensic investigator to assist in litigation strategy.
7 Thus, for all the foregoing reasons, Messrs. Walter and Forseth should be appointed as Lead
8 Plaintiffs.

9 **III. THE COURT SHOULD APPOINT SCHIFFRIN BARROWAY AS**
10 **LEAD COUNSEL**

11 In selecting Lead Counsel, the "guiding principle" is who will "best serve the interest of
12 the plaintiffs." *Millman*, 2004 U.S. Dist. LEXIS 20113 at * 9. Here, Schiffrin Barroway will
13 best serve the interests of all plaintiffs. As fully set forth in Messrs. Walter's and Forseth's
14 opening memorandum, Schiffrin Barroway has a long and proven track record of successfully
15 prosecuting complex shareholder actions, like this one, in both state and federal courts across the
16 country, including serving in a leadership capacity in a numerous derivative cases in the State of
17 California. Moreover, with an office in Walnut Creek, California, Schiffrin Barroway has the
18 distinction of being one of the leading law firms which has specialized in prosecuting claims
19 relating to options backdating, seeking not only to hold the directors and officers responsible for
20 their past misconduct but also to ensure that proper corporate reform is instituted so that these
21 practices are finally eliminated. In light of their extensive record of success in shareholder
22 litigation, their expertise in options backdating litigation, and their vigorous, high-quality
23 prosecution of this action, the Court should appoint Schiffrin Barroway as Lead Counsel. In the
24 alternative, Schiffrin Barroway and Lerach Coughlin should be appointed as Co-Lead Counsel as
25 both firms have demonstrated an ability to work efficiently together in a number of similar cases
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1 based upon defendants' backdating of stock options.²

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3 Dated: July 12, 2007

Respectfully Submitted,

4 SCHIFFRIN BARROWAY
5 TOPAZ & KESSLER, LLP

6 /s/ Alan R. Plutzik
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23 ² See, e.g. *In re Ditech Networks, Inc., Derivative Litigation*, Master File No. C 06-06-05157 JF
24 (N.D. Cal. Nov. 29, 2006) (order appointing Schiffrin Barroway and Lerach Coughlin as Co-Lead
25 Counsel in derivative options backdating litigation)(Winchester Decl. at Exhibit A); *Dossett v.*
26 *Cline, et al.*, Master File No. 5:06-cv-03484 JF (N.D. Cal. July 13, 2006) (same) (Winchester
27 Decl. at Exhibit B); *Chu v. Hughes, et al.*, Master File No. C 06-3513 JF MHP (N.D. Cal. Aug.
10, 2006) (same) (Winchester Decl. at Exhibit C); *Hergotz v. Sola, et al.*, Master File No. C 06-
3783 JF (N.D. Cal. Aug. 31, 2006) (same) (Winchester Decl. at Exhibit D); *Kalindjian v. Antle,*
et al., Master File No. C 06-3440 JF (N.D. Cal. Sept. 6, 2006) (same) (Winchester Decl. at
Exhibit E).